No. 466.

Brief of Jones for Appellee (Mo

Filed Sept. 27, 1897.

# Supreme Court

OF THE

# United States

October Term, 1897



HENRY CRAEMER,

*Appellant,*

vs.

W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON, AND THE STATE OF WASHINGTON,

*Appellee.*

## Appeal to the Supreme Court of the United States

## MOTION TO DISMISS

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

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Comes now William H. Moyer, Sheriff of King County, State of Washington, and the State of Washington, appellee herein, by Patrick Henry Winston, the Attorney General of the State of Washington, and James F. McElroy, the Prosecuting Attorney in and for King County, Washington, and W. C. Jones, Esq., attorney at law, and moves the Court to dismiss and

set aside the appeal herein and all of the proceedings taken by the petitioner, the appellant herein, and that the judgment of the Circuit Court be affirmed for the following reasons :

FIRST : Said appeal is taken for delay only.

SECOND : Said appeal is frivolous.

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## STATEMENT OF THE CASE.

The petition filed by the appellant herein is composed, for the most part, *of allegations of conclusions of law*, but it also shows the following facts : that William H. Moyer is the duly elected, qualified and acting Sheriff in and for King County, Washington, and that the appellant is a citizen and resident of the United States and of the State of Washington; that on the 25th day of August, 1894, the appellant was charged by information by the State of Washington with having committed the crime of murder in the first degree; that within said charge of murder in the first degree, as made in the information, is included also the two lesser degrees of homicide, known under the laws of the State of Washington as, to-wit, that of murder in the second degree, and that of manslaughter.

That the appellant was tried upon the information and on issue joined in the Superior Court of King County, Washington, and was on the 12th day of September, 1894, found guilty as charged in the information, and the Superior Court of King County thereafter on said verdict of "guilty" and on the 13th day of October, 1894, duly adjudged the said appellant

guilty of the crime of murder in the first degree, and the said appellant was then sentenced by the court to be hanged in accordance with the laws of the State of Washington ; that thereafter the appellant herein, being the defendant at the trial court, duly appealed from the judgment and sentence so rendered against him, to the Supreme Court of the State of Washington, on which appeal all of the various and diverse questions herein alleged in appellant's petition were presented to the Supreme Court of the State of Washington, and on the hearing by the Supreme Court of the State of Washington of said appeal, the judgment and sentence of the lower court was affirmed.

*State vs. Craemer, 12 Washington, 217.*

That thereafter the appellant herein, being the defendant in the cause below, sued out a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and the same was thereafter by the Supreme Court of the United States dismissed, the judgment of the Supreme Court being affirmed.

That thereafter on the 20th day of February, A. D. 1897, the Superior Court of King County, Washington, acting by and through the Honorable Orange Jacobs, Judge of said Court, set the 23rd day of April, A. D. 1897, as the day for carrying into effect the death sentence heretofore rendered and pronounced by the said Court against the appellant herein, and issued a death warrant ordering said judgment and sentence to be carried into effect on said last above named day.

That thereafter, on the application of the appellant, the Governor of the State of Washington granted a respite in this cause staying the execution of the

death sentence herein until the 23rd day of July, A. D. 1897, and no longer.

That thereafter, to-wit, on or about the 14th day of June, A. D. 1897, the appellant herein, the same being the defendant in the trial court, filed his petition in the Circuit Court of the United States for the District of Washington, the Northern Division, and before the Honorable C. H. Hanford, Judge thereof, praying that a writ of *habeas corpus* might issue ; that the Circuit Court on hearing and considering the application of appellant for a writ of *habeas corpus* refused to issue the same, and from said refusal to issue said writ of *habeas corpus* and to grant the same as prayed for in his petition, the appellant herein, being the petitioner in said cause, brings this appeal to this Court.

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## ARGUMENT.

This motion to dismiss and to affirm the judgment of the lower court should be affirmed for the following reasons :

### I.

The case presents no Federal question for the consideration of this Court, in that the rights of the appellant herein, defendant in the cause below, guaranteed him by the Constitution and laws of the United States, have not been infringed or *denied* him.

### II.

That the appeal upon its face shows that it was

taken for the purpose of delay *only* and that it is frivolous.

III.

That the allegations contained in the said petition of appellant as filed in the Circuit Court, is one of conclusions of law principally, and from the face of the petition it is manifest that it does not show "the facts concerning the detention of the appellant."

IV.

For other good and sufficient reasons appearing on the face of the record.

The appellant in his petition alleges that his rights under the Constitution of the United States, and under Article 6 thereof, have been violated in that due process of law has not been accorded him ; and further alleges that his rights as secured to him under Article 14 of the Constitution of the United States (presumably the 14th Amendment) have been violated in that the privileges and immunities secured to appellant herein, together with other citizens, were denied him.

These allegations are found in the *eighth* paragraph of the appellant's petition, but in *no place* in the petition is there *an allegation of fact* showing the manner in which the appellant's rights have been, or are, denied to him as secured under either Article 6 of the Constitution of the United States, or under the 14th Amendment to the Constitution of the United States, or under any other provision in the Constitution contained.

It is submitted that a careful reading of the petition will show that it does not "*set forth the facts con-*

*cerning the detention*" of the appellant and of which he complains; that it simply alleges in a general manner that "he is without authority of law confined and restrained of his liberty and detained" and "unlawfully held in custody." (Paragraph 2 of the Petition.)

But "wholly without authority of law, without the jurisdiction of any court contrary to the rights of the petitioner as a citizen, etc." (Paragraph 3 of Petition.)

That he was found "guilty of no greater offense than that of murder in the second degree." (Paragraph 4 of Petition.) And so on through the petition in full and at length and in each paragraph thereof is found principally *allegations of conclusions of law.*

It is submitted that each and every of these allegations found in the petition, together with other allegations of a similar character, are allegations of conclusions of law, and are *not allegations of fact.*

Section 754, Revised Statute U. S., provides, "that the facts concerning the detention must be set forth in the petition." This the appellant has not done, and before he is entitled to any relief, the facts should be set forth.

*Graham vs. Weeks, 138 U. S., 461.*

*Whitten vs. Tomlinson, Sheriff, etc., 160 U. S. 232.*

It is presumed that the propositions which the appellant seeks to raise in his petition are as follows:

I.

That he was charged in the information on which

he was tried and convicted with the crime of murder in the first degree, and that because under the law of the State of Washington, an information charging a crime of that character embraces not only a charge of murder in the first degree, but also of murder in the second degree and of manslaughter, both being lesser offenses; that he was charged with three separate offenses, hence denied the due process of law accorded him by the Constitution of the United States.

II.

That the verdict rendered in this cause against the defendant was one finding the defendant "guilty as charged in the information," and that said verdict is uncertain in that the information charges the commission of three crimes, and the verdict does not distinctly point out of which crime the defendant is guilty.

After his conviction in the trial court the appellant appealed to the Supreme Court of the State of Washington, and in that appeal the sufficiency of the information was raised and discussed, and the Supreme Court of the State of Washington in affirming the judgment of the lower court held that the information was sufficient under the laws of that state.

*State vs. Craemer, 12 Washington, 217.*

*Laws of Washington 1891, page 60,*

and in Sections 75 and 76 thereof, it is provided as fallows:

Sec. 75: "Upon an information for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the *

* * information, and guilty of any degree inferior thereto * * *."

Sec. 76: "In all other cases the defendant may be found guilty of an offense, the commission of which is necessarily included within that with which he is charged in the * information."

The form of the verdict is provided by the laws of the State of Washington, and is found in what is known as the Second Vol. of Hill's Code, Sec. 1325, and is as follows, the formal parts being omitted: "The jury in the case of the State of Washington, plaintiff, vs.————————, defendant, find the defendant (guilty or not guilty, as the case may be.)

This form of verdict on an information charging the defendant with having committed the crime of murder in the first degree has been held sufficient in the state of Washington.

*Timmerman vs. Territory of Wash., 3rd Wash. Territory, Rep., 445.*

and the holding of the highest court of this state in the case last above cited makes *that the settled law of the state.*

The contention of the appellant is answered by the statement of the known holdings of this court to the effect that the contention as to what should or should not be placed in an information, and as to what is the proper method of trial procedure, is a matter over which the legislature of the various states has control, and one by which the constitution of the United States is not infringed, and the holdings of the higher courts of the various states on matters of this kind is final, when within their respective jurisdiction.

*Ex Parte Richard S. Parks, 93 U. S., 18.*
*Kohl vs. Lehlback, Sheriff, etc., 160 U. S., 293.*
*Graham vs. Weeks, etc., 138 U. S., 461.*
*Jugiro vs. Bush, etc., 140 U. S., 291.*

From the allegations appearing in the petition as filed by appellant, it is manifest that the circuit court ruled correctly in refusing to issue the writ as prayed for therein.

*Ex Parte Terry, 128 U. S., 301.*
*In Re Wadkins, 3rd Peters, 193.*

The contention which the appellant herein has sought to raise, having been passed upon by the highest court of the State of Washington, and the sentence of the lower court having been affirmed, and the cause then by the appellant having been taken by writ of error to the Supreme Court of the United States, and that court having in effect affirmed the judgement of the Supreme Court of the state, the judgment of the Supreme Court of the State of Washington is now the settled law of that state and of this case, and the action of the circuit court of the United States in refusing to grant the writ of *habeas corpus* as prayed for by the appellant herein was correct.

WHEREFORE, the appellee in this case moves this honorable court to dismiss the appeal herein and to affirm the judgment of the lower court in refusing to grant said writ of *habeas corpus*.

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

To Messrs. Pratt & Riddle, Attorneys for Appellant herein:

PLEASE TAKE NOTICE: That the foregoing and attached motion to dismiss the appeal and to affirm the judgment of the Circuit Court rendered in the foregoing named cause, will be brought on for hearing before the Supreme Court of the United States in the City of Washington, D. C., on Monday, the 11..... day of...October..., A. D. 1897, at 12 o'clock noon, of that day, or as soon thereafter as counsel can be heard.

PATRICK HENRY WINSTON,
JAS. F. McELROY,
W. C. JONES,
Attorneys for Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1897.

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HENRY CRAEMER,

*Appellant,*

vs.

W. H. MOYER, SHERIFF OF KING COUNTY, WASHINGTON, AND THE STATE OF WASHINGTON,

*Appellee.*

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An Apppeal to the Supreme Court of the United States.

AFFIDAVIT OF SERVICE.

STATE OF WASHINGTON, } ss.
COUNTY OF KING }

John B. Hart, being first duly sworn, upon oath deposes and says: That he is the Deputy Prosecuting Attorney of King County aforesaid, and a citizen of the United States, over the age of twenty-one years; on the 16th day of August, A. D. 1897, I duly served the within motion and notice upon the appellant, Henry Craemer, and Messrs Pratt & Riddle, his counsel, by delivering to each personally in King County, Washington, three copies of this motion and notice.

JOHN B. HART.

Subscribed and sworn to before me this 18th day of August, 1897.

JAMES F. McELROY,

*Notary Public in and for the State of Washington, Residing at Seattle*